

COPY

Dan King  
Attorney  
Sempra Energy  
101 Ash Street, HQ 13D  
San Diego, CA 92101-3017  
  
Tel: 619-696-4350  
Fax: 619-699-5027  
DAKing@Sempra.com

June 8, 2004

R. M. "Johnnie" Burton  
Director, Minerals Management Service  
1849 C Street, N.W.  
Mail Stop 423  
Washington, D.C. 20426  
Attn: Policy and Management Improvement

**Re: The Open and Non-Discriminatory Movement of Oil and Gas as Required  
by the Outer Continental Shelf Lands Act**

Dear Director Burton:

Sempra Energy Global Enterprises (Sempra Global) submits these comments pursuant to the Notice published in the Federal Register on April 12, 2004 by the Minerals Management Service (MMS). *The Open and Non-Discriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act*, 69 F.R. 19137 (Apr. 12, 2004). The MMS has requested comments with respect to potential amendments to its regulations regarding how the Department of the Interior should ensure that pipelines transporting oil or gas under permits, licenses, easements, or rights-of-way on or across the Outer Continental Shelf (OCS) "provide open and non-discriminatory access to both owner and non-owner shippers" as required under section 5(f) of the Outer Continental Shelf Lands Act (OCSLA). 43 U.S.C. § 1334(f)(1)(A) (2004).

**I. Correspondence and Communications**

Correspondence and communications concerning these comments should be directed to:

Daniel A. King  
Sempra Energy  
Law Department  
101 Ash Street HQ13D

Stacy Van Goor  
Sempra Energy  
101 Ash Street HQ15G  
San Diego, California 92101

San Diego, California 92101  
(619) 696-4350  
(619) 699-5027 (facsimile)  
daking@sempra.com

(619) 696-2264  
(619) 696-2500 (facsimile)  
svangoor@sempraglobal.com

## II. Description of Semptra Global

Semptra Global is wholly owned by Semptra Energy (Semptra), a publicly traded company based in San Diego, California. Semptra, through various subsidiaries and affiliates, provides a wide spectrum of electric, natural gas and energy-related products and services to a diverse range of customers. Semptra Global is the holding company within the Semptra organization designed to hold the non-utility energy subsidiaries of the company. One subsidiary of Semptra Global, Semptra Energy LNG (Semptra LNG), has announced development plans for three liquefied natural gas (LNG) regasification terminals in North America.

## III. Discussion

The MMS requests input with respect to the creation or revision of the definitions of terms used in the Notice. *See*, Section III – Definitions and Other Topics. Among other definitions, the Notice indicates that the MMS will consider the definition of “pipelines subject to OCSLA.” The comments of Semptra Global will address this topic as it pertains to offshore LNG facilities.

Offshore LNG facilities are governed by the Deepwater Port Act of 1974, 33 USC § 1501, *et seq.* Jan. 3, 1975, P.L. 93-627, 88 Stat. 2126. The Deepwater Port Act defines a “deepwater port” as follows:

(9) “deepwater port”—

(A) means any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in section 23 [33 USCS § 1522], and for other uses not inconsistent with the purposes of this Act, including transportation of oil or natural gas from the United States outer continental shelf;

(B) includes all components and equipment, **including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark;**

(C) in the case of a structure used or intended for such use with respect to natural gas, includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for



construction and operation as part of a deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities;

....

33 U.S.C. § 1502(9) (2004) (emphasis added). Therefore, an offshore LNG facility and any take-away pipeline located seaward of the high water mark are included within the definition of a "deepwater port" as set forth in the Deepwater Port Act.

Unlike facilities governed by OCSLA generally, deepwater ports licensed pursuant to the Deepwater Port Act are exempt from open access requirements:

A licensee of a deepwater port for natural gas, or an affiliate thereof, may exclusively utilize the entire capacity of the deepwater port and storage facilities for the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates. The licensee may make unused capacity of the deepwater port and storage facilities available to other persons, pursuant to reasonable terms and conditions imposed by the licensee, if such use does not otherwise interfere in any way with the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates.

33 U.S.C. § 1507(d) (2004). As the foregoing provision makes clear, a licensed deepwater port is not subject to open access requirements, and may sell unused capacity at negotiated rates and terms and conditions of service. Congress granted deepwater ports for natural gas (e.g., LNG terminals and their take-away pipelines to the high-water mark) this flexibility in its recent amendments to the Deepwater Port Act, making clear that Congress intends for these facilities to be governed by the Deepwater Port Act and not by OCSLA's open-access requirements.<sup>1</sup>

In order to provide guidance and clarity for entities with facilities that are located on (or that may be developed on) the OCS, Sempra Global requests that the definition of "pipelines subject to the OCSLA" developed in this proceeding specifically recognize the aforementioned provisions of the Deepwater Port Act for the purposes of the proposed open access requirements. The definition should provide that pipelines that are part of a deepwater port licensed pursuant to the Deepwater Port Act are excluded from the definition of "pipelines subject to the OCSLA," and are thus not subject to the open access requirements being developed in this MMS rulemaking proceeding.

This clarification will: (1) give effect to Congress' intent, as expressed in the recent amendments to the Deepwater Port Act; (2) help to eliminate any confusion that


<sup>1</sup> Nov. 25, 2002, P.L. 107-295, Title I, § 106(d), 116 Stat. 2087. Prior to these amendments, the Deepwater Port Act applied only to deepwater ports for oil, which, in contrast to deepwater ports for natural gas, are subject open-access requirements.

may exist with regard to the scope of the proposed MMS open access regulations for pipelines subject to OCSLA; and (3) provide greater regulatory certainty for potential investors and developers of offshore LNG facilities licensed as deepwater ports, enabling the development and operation of such facilities to proceed in a manner consistent with the Deepwater Port Act.

#### **IV. Conclusion**

Sempra Global respectfully requests that full consideration be given to the comments above. Sempra Global appreciates the opportunity to participate in this rulemaking and looks forward to working with the MMS to address and resolve the issues raised by this proceeding.

Respectfully submitted,



Daniel A. King  
Sempra Energy  
Law Department  
101 Ash Street HQ13D  
San Diego, California 92101  
(619) 696-4350  
(619) 699-5027 (facsimile)  
daking@sempra.com

*On behalf of Sempra Energy Global  
Enterprises*